

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 210 of the)	MB Docket No. 05-181
Satellite Home Viewer Extension and)	
Reauthorization Act of 2004 to Amend)	
Section 338 of the Communications Act)	

To: Marlene H. Dortch, Secretary

MOTION TO DISMISS SURREPLY

1. Eastern Television Corporation, Encuentro Christian Network Corp., International Broadcasting Corporation, and R y F Broadcasting, Inc. (jointly referred to as “Petitioners”) by their counsel and in accordance with Rule 1.429 of the regulations of the Federal Communications Commission hereby submit this Motion to Dismiss the Surreply filed by DirecTV, Inc. (“DirecTV”)¹ in the above-captioned docket. Petitioners request that the Commission dismiss the DirecTV Surreply. In the alternative, should the Commission accept the Surreply, DirecTV’s unsupported charge of Petitioners’ “misrepresentation” should be rejected summarily.

I. Rules Require Motion for Leave to Supplement Opposition

2. The DirecTV Surreply is a supplement to the DirecTV Opposition.² As such, Petitioners argue that opponents are required to follow the same procedures for supplementing oppositions as the Commissions requires for petitioners for reconsideration. Rule 1.429(d)

¹ See *Surreply* of the DirecTV, Inc., FCC 05-181 (March 6, 2006) [*hereinafter* DirecTV Surreply].

² See *Opposition to Petition for Reconsideration* of the DirecTV, Inc., FCC 05-181 (December 8, 2005) [*hereinafter* DirecTV Opposition].

instructs that “[n]o supplement to a petition for reconsideration ... will be considered except upon leave granted pursuant to a separate pleading stating the grounds for acceptance of the supplement.”³ Absent a rule to the contrary,⁴ the standard for submitting supplements to the record for petitions should be applied to oppositions. Petitioners therefore request that the DirecTV Surreply be dismissed for failure to file a motion for leave to submit a supplement to its Opposition.

II. Commission’s Rules Do Not Permit Surreplies

3. Rule 1.429 specifies the terms and conditions whereby oppositions to a petition for reconsideration and replies to said oppositions may be filed.⁵ Nowhere in the language within this rule does the Commission indicate a willingness to accept filings in addition to those specifically addressed. Petitioners respectfully request that the Surreply be dismissed on grounds that it does not comply with Rule 1.429’s clear requirements and for DirecTV’s failure to request leave of Rule 1.429.

III. Acceptance of Surreplies Frustrates Timeframe for Petitions of Reconsideration

4. The filing of supplements and additions to an opposition to a petition for reconsideration frustrates the specific timeframe enacted by the Commission in establishment of the pleading cycle for petitions for reconsideration.⁶ In submitting its Surreply nearly 120 days

³ 47 C.F.R. § 1.429(d).

⁴ DirecTV cites no authority to permit its Surreply, nor does it cite any authority that would require the Commission to accept the Surreply submission to the record.

⁵ 47 C.F.R. § 1.429.

⁶ *Id.*

after the petition was filed,⁷ DirecTV in essence extended the 90 day period within which the Commission is to act on the petition under Section 1.429.⁸ Thus, petitioners request that the DirecTV Surreply be dismissed because it frustrates the Commission's ability to timely act on petitions for reconsideration.

IV. DirecTV Surreply Does Not Comply With Rule 1.41

5. Finally, petitioners note that the DirecTV Surreply may also be considered an informal request for Commission action pursuant to Rule 1.41.⁹ However, such informal requests must, among other requirements, "set forth clearly and concisely ...the relief sought, the statutory and/or regulatory provisions ... under which the relief is sought, and the interest of the persons submitting the request."¹⁰ Because DirecTV's Surreply fails to assert authority upon which this relief is sought, Petitioners request that the Commission dismiss the DirecTV Surreply for failure to satisfy the requirements for an informal request for Commission action.

V. DirecTV Fails to Support its Claim of Misrepresentation

6. In the alternative, should the Commission accept the Surreply, the Commission must reject DirecTV's charge of "misrepresentation" as this claim is totally unsupported.¹¹ A misrepresentation is "the act of making a false or misleading statement about something . . . with

⁷ See In the Matter of Implementation of Section 210 of the Satellite Home View Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act (MB Docket No. 05-181), *Public Notice*, Report No. 2738 (November 8, 2005).

⁸ 47 C.F.R. § 1.429.

⁹ 47 C.F.R. § 1.41.

¹⁰ *Id.*

¹¹ DirecTV Surreply, *supra* note 1 at 2 [emphasis added].

the intent to deceive.”¹² DirecTV has utterly failed to meet this standard and, in particular, to provide a basis for an intent to deceive.

7. DirecTV argues that Petitioners misrepresented the true ownership structure of DirecTV Latin American (“DirecTVLA”). In their Reply to Opposition Petitioners stated that, “DirecTV Group, Inc. owns 85.9% of DirecTV Latin America, LLC and owns 100% of DirecTV Enterprises, LLC.”¹³ Neither this statement, nor the corporate structure flow chart provided by Petitioners, is disputed by DirecTV.

8. DirecTV then argues that Petitioners misrepresented what DirecTV entity shares spectrum with DirecTVLA when Petitioners stated, “[a]s far as we have been able to determine, DirecTV and DirecTV Latin America, LLC both rely on the spectrum licensed to DirecTV Enterprises, LLC to provide their DBS services.”¹⁴ DirecTV acknowledges that “DTVLA shares one of its uplink centers with DIRECTV”¹⁵, but then contradictorily states that “DIRECTV and DTVLA employ *different* satellites, facilities and spectrum to deliver programming” While it is unclear how DirecTV defines “facilities” and “up link centers”, it is clear that the commonly owned DirecTV and DirecTLA share an operational relationship.

VI. Conclusion

9. The Commission must dismiss DirecTV’s Surreply for failure to file a motion for leave, for frustrating the petition for reconsideration pleading cycle, for failing to present a compelling argument to warrant acceptance of the Surreply, and for failing to comply with the

¹² BLACK’S LAW DICTIONARY 1016 (7th 1999).

¹³ *See Reply Oppositions to Petition for Reconsideration of the Puerto Rican Broadcasters*, FCC 05-181 (December 19, 2005) at 4 [emphasis added].


¹⁴ *Id.*

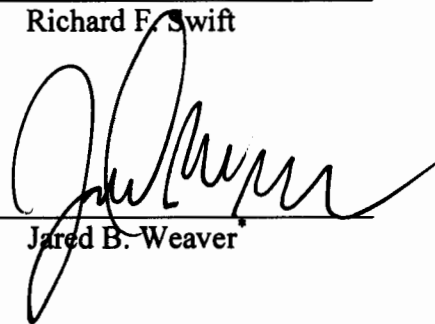
¹⁵ DirecTV Surreply, *supra* note 1 at 2-3 [emphasis added].

Commission's rules. Additionally, DirecTV's claim of misrepresentation is wholly unsupported and must be dismissed as such. If anything, the material provided by DirecTV in its Surreply supports Petitioners' position regarding the operational links between DirecTV and DirecTVLA.

Respectfully submitted,

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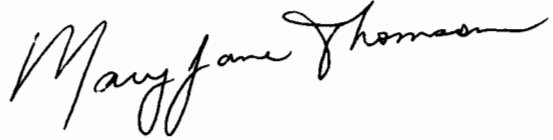
* Admitted in Maryland. Not admitted in D.C.

Certificate of Service

I, Mary Jane Thomson, hereby certify that on this 13th day of March, 2006, true and correct copies of the foregoing "Motion to Dismiss Surreply" have been served first class U.S. mail to the following:

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